

STATE OF NORTH CAROLINA

WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
12 DHC 31

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

JEFFREY S. BERMAN, Attorney,

Defendant

COMPLAINT

Plaintiff, complaining of Defendant, alleges and says:

1. Plaintiff, the North Carolina State Bar, is a body duly organized under the laws of North Carolina and is the proper party to bring this proceeding under the authority granted it in Chapter 84 of the General Statutes of North Carolina, and the Rules and Regulations of the North Carolina State Bar promulgated thereunder.

2. Defendant, Jeffrey S. Berman, was admitted to the North Carolina State Bar on 19 March 1988 and is an Attorney at Law subject to the rules, regulations, and Rules of Professional Conduct of the North Carolina State Bar and the laws of the State of North Carolina.

3. During the relevant period referred to herein, Berman was actively engaged in the practice of law in Greensboro, Guilford County, North Carolina.

4. On 22 March 2011, Vanessa Greeson's five month old granddaughter, K.C., was admitted to the hospital with serious injuries. The Guilford County Department of Social Services (DSS) was notified.

5. DSS held a meeting at the hospital before K.C. was discharged to discuss concerns about her health and implement a plan for K.C.'s safety. Neither Greeson nor K.C.'s parents were permitted by DSS to take K.C. home because they had been her primary caretakers in the weeks preceding K.C.'s hospitalization.

6. Greeson, K.C.'s parents, and other family members agreed to a safety plan with DSS that provided K.C. would live with Greeson's sister, Teresa Staley, and the only visitation permitted would be supervised visitation by K.C.'s parents.

7. Greeson and other family members were concerned that DSS would try to take custody of K.C.

8. In late May 2011, Greeson sought legal advice from Berman regarding her granddaughter's status and placement. They met several times, and Greeson's daughter

(K.C.'s mother) and K.C.'s father accompanied Greeson to one of the meetings with Berman.

9. Greeson told Berman that DSS was involved with the family and had placed K.C. with Staley. Greeson also told Berman that she was a "suspect" in DSS's investigation of how K.C. had been injured.

10. Berman told Greeson that if they acted immediately, he could file something with the court that would "trump" any action by DSS to take custody of K.C.

11. Berman prepared a verified complaint for child custody on behalf of Greeson. K.C.'s parents were named as defendants.

12. At the time he prepared the verified complaint, Berman was aware that in order for a nonparent to obtain custody under North Carolina law, there must be a showing that the child's parents acted in a manner inconsistent with their constitutionally-protected parental status.

13. Berman intentionally omitted from the custody complaint any allegation that K.C.'s parents acted in a manner inconsistent with their constitutionally-protected parental status.

14. N.C. Gen. Stat. § 50A-209 requires all parties to custody proceedings to state under oath the child's current address, where and with whom the child has lived in the preceding five years, and the names and addresses of any non-party who has physical custody of the child.

15. Berman prepared an Affidavit as to Status of Minor Child that Greeson executed and Berman attached to the custody complaint. The affidavit stated that from birth through the present, K.C. had lived with her "mother and/or third party." It provided no address(es) and did not reveal that Staley had physical custody of K.C.

16. At the time Berman prepared the Affidavit as to Status of Minor Child, he was aware of the requirements of N.C. Gen. Stat. § 50A-209. Berman also knew that K.C. (who was only five months old) had been living with Staley pursuant to a DSS safety plan for more than two months.

17. Berman prepared a consent order giving Greeson joint legal custody and primary physical custody of K.C. On 7 June 2011, Berman filed the verified complaint for child custody and presented the consent order to the court *ex parte*.

18. Because Berman intentionally omitted pertinent information from the Affidavit as to Status of Minor Child, the document was misleading and had the effect of concealing material facts from the court.

19. Berman did not inform the court that DSS was involved with the family or that K.C. had been living with a third party due to concerns about her health and welfare.

20. Berman falsely informed the court that K.C. was already living with Greeson.

21. But for Berman's false statement and intentional omission of material facts, the court would not have entered the order granting Greeson custody of K.C.

22. When DSS discovered that Greeson had obtained custody of K.C. by way of the consent order, it immediately filed a petition alleging that K.C. was abused, neglected, and dependent. As a result, K.C. was placed in foster care for at least six months before she was returned to her family.

THEREFORE, Plaintiff alleges that Defendant's foregoing actions constitute grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) in that Defendant violated the Rules of Professional Conduct in effect at the time of his actions as follows:

- (a) By filing a custody complaint on behalf of a non-parent that he knew did not contain legally sufficient allegations to justify the relief sought, Berman brought a proceeding that lacked basis in law and/or fact in violation of Rule 3.1;
- (b) By telling the court that K.C. already lived with Greeson, Berman knowingly made a false statement of material fact to the tribunal in violation of Rule 3.3(a);
- (c) By failing to disclose K.C.'s injury, current custodian, and DSS involvement to the court when presenting the consent order to the judge *ex parte*, Berman failed to disclose all material facts known to him that would enable the judge to make an informed decision in violation of Rule 3.3(d); and
- (d) By misleading the court into transferring custody of K.C. to his client, Berman engaged in conduct involving dishonesty, deceit, or misrepresentation in violation of Rule 8.4(c) and conduct prejudicial to the administration of justice in violation of Rule 8.4(d).

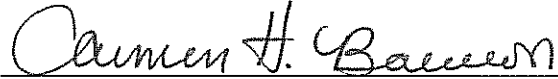
WHEREFORE, Plaintiff prays that

- 1. Disciplinary action be taken against Defendant in accordance with N.C.G.S. § 84-28 (c) and 27 N.C.A.C. 1B § .0114 as the evidence on hearing may warrant;
- 2. Defendant be taxed with the administrative fees and with actual costs permitted by law in connection with the proceeding; and
- 3. For such other and further relief as the Hearing Panel deems appropriate.

This the 16th day of July, 2012.



Margaret M. Hunt, Chair
Grievance Committee



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